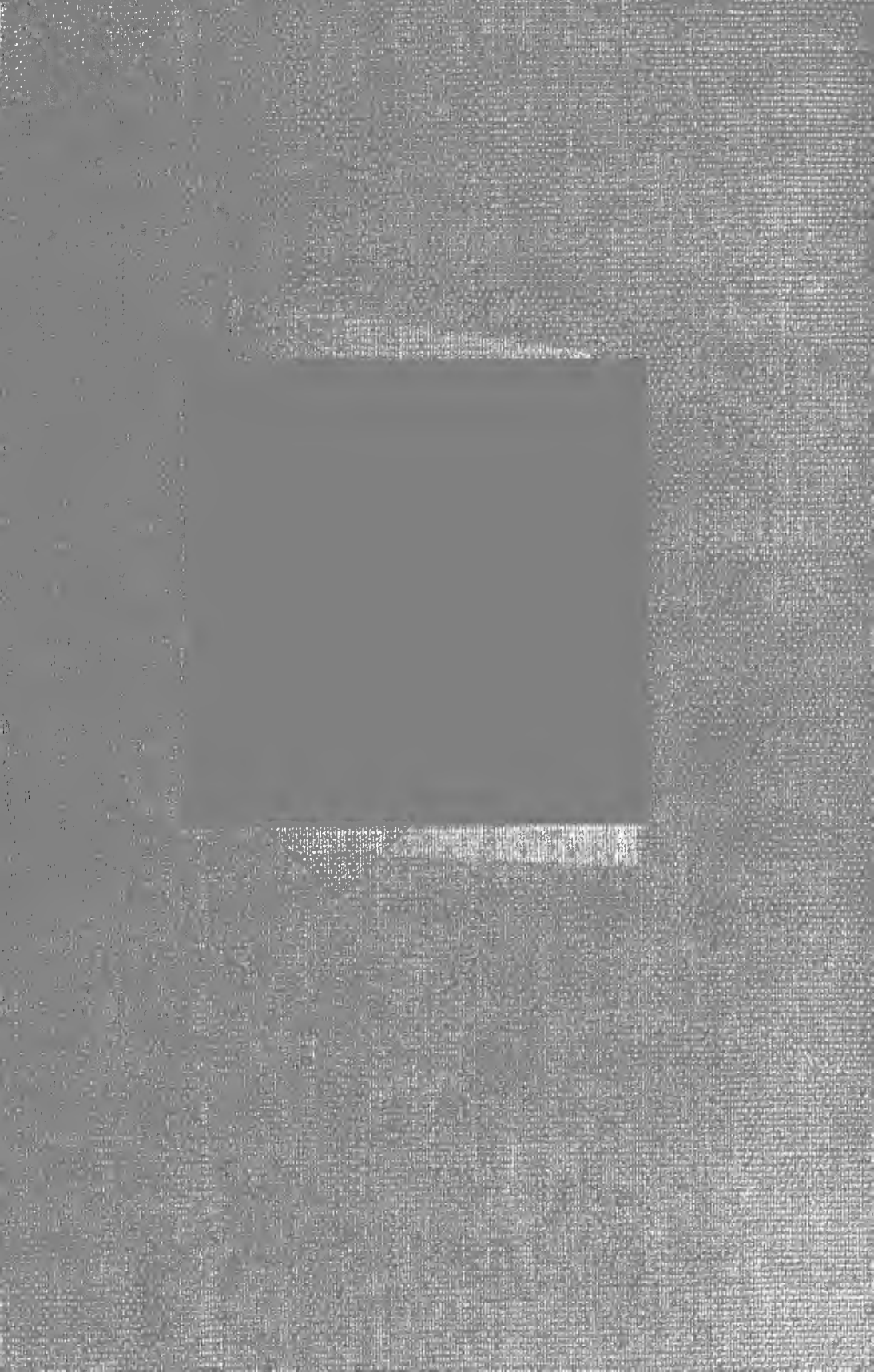

BRIEF OUTLINE OF RENEGOTIATION PROCEDURES AND THE ACT AS AMENDED THROUGH SEPTEMBER 6, 1958

COMPILED BY THE
STAFF OF THE
JOINT COMMITTEE ON INTERNAL REVENUE TAXATION
FOR USE OF THE
COMMITTEE ON FINANCE
FROM MATERIAL SUPPLIED BY
THE RENEGOTIATION BOARD

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Excessive profits are determined not with respect to individual contracts, but with respect to the receipts or accruals of the contractor under all renegotiable contracts and subcontracts in an entire fiscal year of the contractor. The advantages of this procedure are substantial: (1) Obviously, it reduces the administrative burden and saves the time of both Government and industry; (2) it holds cost accounting and cost allocations to a minimum; (3) it permits the use of the regular financial and accounting data maintained and prepared by contractors for tax purposes; and (4) most importantly, it enables contractors to offset their losses or low profits on one or more defense contracts against their profits from other defense contracts during the same fiscal year.

B. APPLICATION OF STATUTORY FACTORS

Renegotiable profits are determined by charging against renegotiable receipts or accruals (usually referred to as "renegotiable sales") all costs and expenses incurred by the contractor and allocable to the performance of renegotiable business. Excessive profits are that portion of such renegotiable profits which is determined in accordance with the act to be excessive. In making these determinations, the Board is required by the act to observe certain prescribed factors. Briefly stated, these factors are efficiency, reasonableness of costs and profits, net worth, risk, contribution to defense effort, character of the business, and any other factor which the Board deems equitable.

II. Coverage of Act

A. DEPARTMENTS NAMED IN ACT

Except for the specific exemptions provided by section 106 all contracts with the departments named in the act and related subcontracts are subject to renegotiation on receipts or accruals after December 31, 1950, and before January 1, 1957. Contracts with other departments designated by the President under the act and related subcontracts are subject to renegotiation on receipts or accruals starting with the month following designation. By amendment approved August 1, 1956, effective December 31, 1956, the departments named in the act were reduced to the Department of Defense, the Department of the Army, the Department of the Navy, the Department of the Air Force, the Maritime Administration, the Federal Maritime Board, the General Services Administration, and the Atomic Energy Com-

mission. By amendment approved September 6, 1958, the National Aeronautics and Space Administration was added to the departments.

B. EXEMPTIONS

Exemptions are either mandatory, by force of the statute itself, or permissive, granted by the Board pursuant to authority vested in it by the act.

1. Mandatory exemptions

The mandatory exemptions are briefly as follows:

(*a*) Contracts with political units or their subdivisions and contracts with foreign governments.

(*b*) Contracts and subcontracts for raw agricultural commodities.

(*c*) Contracts and subcontracts for minerals and timber not processed beyond the first form or state suitable for industrial use.

(*d*) Contracts and subcontracts with regulated common carriers or public utilities.

(*e*) Contracts and subcontracts with tax-exempt organizations.

(*f*) Contracts and subcontracts which the Board deems not directly connected with national defense.

(*g*) Competitive bid construction contracts and subcontracts.

(*h*) Subcontracts under the above exempt contracts or subcontracts.

(*i*) Contracts and subcontracts for standard commercial articles or services under certain conditions.

(*j*) By amendment approved August 1, 1956, effective as to fiscal year ending after June 30, 1956, a new commercial exemption was added to the act replacing the standard commercial article exemption in effect as to years ending after December 31, 1953. The amendment liberalized the standard commercial article exemption and placed it largely upon a self-applied basis.

2. Partial mandatory exemption

Section 106(c) of the act exempts contracts and subcontracts for new durable productive equipment, except to the extent of that part of the sales price which bears the same ratio to the total price as 5 years bears to the average useful life of such equipment. Thus if a machine has an expected useful life of 10 years, five-tenths of the sale price would be renegotiable.

3. Permissive exemptions

Section 106(d) of the act authorizes the Board, in its discretion, to exempt the following:

(*a*) Contracts and subcontracts to be performed outside the continental United States or in Alaska.

(*b*) Contracts and subcontracts under which the profits can be reasonably determined when the contract price is established.

(*c*) Contracts and subcontracts with provisions which the Board considers otherwise adequate to prevent excessive profits.

(*d*) Contracts and subcontracts of a secret nature.

(*e*) Subcontracts as to which the Board considers it not administratively feasible to segregate the profits attributable thereto

from the profits attributable to nonrenegotiable activities of the contractor.

III. Structure of Board Organization

A. STATUTORY BOARD

The Renegotiation Board was created by the Renegotiation Act of 1951, approved March 23, 1951, as an independent establishment in the executive branch of the Government. It was organized on October 3, 1951.

The Board is composed of five members. Each is appointed by the President, by and with the advice and consent of the Senate. The Secretaries of the Army, the Navy, and the Air Force, subject to the approval of the Secretary of Defense, and the Administrator of General Services each recommend to the President for his consideration one person from civilian life to serve as a member of the Board. The President designates one member to serve as Chairman.

No member of the Board may actively engage in any business, vocation, or employment other than as a member of the Board.

By express provision in section 107(d) of the act, no function, power or duty of the Board may be delegated by it to any person (other than the Secretary of a department) who is not responsible directly to the Board or who is engaged on behalf of any Department in the making of contracts for the procurement of supplies or services, or in the supervision of such activity.

B. REGIONAL BOARDS

The Board maintains three regional boards with authority to conduct renegotiation proceedings in cases assigned to them. These regional boards are located in Detroit, Mich.; Los Angeles, Calif.; and New York, N.Y. Each regional board is composed of a chairman and additional board members as appointed by the Chairman of the statutory Board.

IV. Description of Process of Determining Excessive Profits

A. OVERALL FISCAL YEAR BASIS

As already explained, statutory renegotiation is conducted on an overall basis for each fiscal year of a contractor. The first step, necessarily, is for the contractor to assemble all of its renegotiable sales for a fiscal year, and all of the allowable costs and expenses allocable thereto.

B. FILING REQUIREMENTS

1. Nature of filing required

The act requires the contractor to file an annual report with respect to its receipts or accruals from renegotiable contracts and subcontracts during its fiscal year. This duty is imposed by the act upon every person who holds any such contracts or subcontracts (sec. 105(c)(1)) and whose receipts or accruals therefrom during the fiscal year exceed the prescribed minimum.

2. Time for filing

Generally, under the act and regulations of the Board, the report of the contractor must be filed on or before the first day of the fifth calendar month following the close of the fiscal year of the contractor. The responsibility for filing the report rests with the contractor, whether or not any specific request for such filing has been made by the Board.

3. Standard form of contractor's report

When the aggregate renegotiable receipts or accruals of the contractor, and all other persons under control of or controlling or under common control with the contractor, exceed the minimum amount prescribed for renegotiation, the contractor is required to file detailed financial and other information. For this purpose, the Board has prescribed a form of report known as the standard form of contractor's report.

4. Statement of nonapplicability

When the aggregate renegotiable receipts or accruals of the contractor, and all other persons under control of or controlling or under common control with the contractor, do not exceed the minimum amount prescribed for renegotiation, the contractor is entitled at its option to so state and need not submit the detailed financial and other information otherwise required. For this purpose, the Board has prescribed a single-page form of report known as the statement of nonapplicability.

C. SCREENING PROCEDURE AT HEADQUARTERS

All contractor filings are examined at the headquarters office of the Board in Washington. Filings which report or are found to involve renegotiable sales below the statutory minimum are set aside; the act provides that such sales may not be renegotiated. Filings which show renegotiable sales in excess of the statutory minimum are given a further preliminary examination or "screening." If, from the information contained in the contractor's filing, it is apparent that the contractor did not realize excessive profits for the fiscal year under review and that no purpose would be served by further renegotiation proceedings, the contractor is "screened out" by a notice. On the other hand, if in the screening examination there appears to be any possibility of excessive profits, an assignment of the case is made to a regional board selected according to its proximity to the contractor, its relative workload, and its experience and special skills.

D. SEGREGATION OF SALES

Sales segregation is the separation of those receipts or accruals of the contractor which are subject to renegotiation, from those which are not subject to renegotiation. The contractor has the primary responsibility to do this. The Board does not disapprove any method employed by the contractor if it is satisfied that such method, under all the circumstances, affords the best basis for reasonably precise determination.

E. ALLOCATION OF COSTS

In determining the costs of renegotiable business, the renegotiation law has always been closely linked to the Internal Revenue Code. By express provision in the act, all items estimated to be allowable as deductions or exclusions under the Code must, to the extent allocable to renegotiable contracts and subcontracts, be allowed as items of cost in renegotiation. Generally, the method of accounting employed by the contractor in determining net income for Federal income tax purposes is followed for renegotiation purposes. It is not followed when, in the opinion of the Board, such method does not clearly reflect the renegotiable profits of the contractor. In such cases, by special accounting agreement with the contractor or, if necessary, by unilateral action, a different method of accounting is employed to determine the costs and expenses of the contractor allocable to the fiscal year under review.

Specific provision is made in the regulations for the renegotiation treatment of selected items of cost. Costs allocable to nonrenegotiable business, including exempt business, are not allowed as a charge against renegotiable business.

The act provides that the contractor generally shall be allowed as a cost, in the year under review, the amount of any loss sustained by the contractor on renegotiable business in either of the 2 years immediately preceding the fiscal year under review. Except to this extent, losses in other years are not allowed. However, by regulation, in connection with the statutory factor of risk, the Board gives special consideration to evidence showing risks through losses incurred by the contractor in performing similar contracts in other years.

F. COMMON CONTROL PROVISION

When a contractor is not affiliated with or related to any oth contractor, it stands entirely on its own feet in renegotiation. On the other hand, when a contractor controls or is under control of or under common control with any other contractor, no member of the group is relieved from renegotiation if the renegotiable sales of the entire group aggregate an amount in excess of the floor. This provision is designed to prevent evasion of the act. Intercompany sales—that is, amounts received or accrued by any member of the group from any other member—are eliminated in computing this aggregate.

G. CONSOLIDATED AND CONCURRENT RENEGOTIATION

When it is determined that a group of related contractors has exceeded the floor, and that each member is to be renegotiated, it must next be decided whether each member shall be renegotiated separately or whether all shall be renegotiated on a consolidated basis. The choice rests largely with the contractors. If the group consists of a parent and subsidiary corporations that constitute an "affiliated group" under the provisions of the Internal Revenue Code, the Board is required by the act, upon request, to conduct renegotiation on a consolidated basis. When the related contractors do not constitute an affiliated group, the Board in its discretion, upon request, may grant consolidation. However, when the members of an affiliated

group or a related group are renegotiated separately renegotiations with the individual members of such group are conducted currently, if practicable. This enables the Board to view the related enterprises as a whole and thus to avoid unfair treatment.

H. DESIGNATION OF ASSIGNED CASES

As indicated above, cases are normally assigned in the first instance to one of the regional boards. At the time of assignment, every case is designated by the statutory Board as either a class A case or a class B case.

1. Class A cases

Generally a class A case is one in which the contractor reports, in its renegotiation filing for a fiscal year, that it has derived profits of more than $800,000 from renegotiable contracts and subcontracts during such year. The Board has delegated to the regional boards, in such cases, authority to make recommended determinations of excessive profits to the Board for final determination by the Board.

2. Class B cases

Generally, a class B case is one in which the contractor reports, in its renegotiation filing for a fiscal year, that it has derived profits of $800,000 or less from renegotiable contracts and subcontracts during such year. The Board has delegated to the regional boards, in such cases, authority to make final determinations of excessive profits. Every such determination, when it is not agreed to by the contractor and accordingly is embodied in an order of the regional board, is subject to review by the statutory Board, either upon its own motion or upon timely application of the contractor.

I. REGIONAL BOARD PROCEDURE

After renegotiation has been commenced by the assigned regional board, and after the regional board has determined that sales have been properly segregated and costs properly allocated, it proceeds next to determine whether excessive profits have been realized. Full details of the contractor's performance, as related to the various statutory factors, are obtained through correspondence and meetings with the contractor. In all refund cases, the meetings with the contractor include one or more meetings with the regional renegotiator and accountant assigned to the case, and upon request of the contractor at least one meeting with a panel composed of three members of the regional board. The contractor is given an opportunity to present, both orally and in writing, all the information and argument which he considers pertinent to the case. No final determination is made until this has been done.

J. CLEARANCES, AGREEMENTS AND ORDERS

If it is determined that the contractor did not realize excessive profits in the fiscal year under review, a clearance is granted. Usually this takes the form of a notice; occasionally, when provision for unresolved contingencies is necessary, a clearance agreement is made.

If excessive profits are determined and the contractor accepts the determination, a refund agreement is executed and payment is required to be made by the contractor in accordance therewith.

If the contractor is unwilling to accept the determination of excessive profits, an order is issued directing payment to be made by the contractor.

In any elimination of excessive profits, whether by agreement or order, the contractor is allowed a credit for Federal income and excess-profits taxes as provided in section 3806 of the Internal Revenue Code of 1939 or section 1481 of the Internal Revenue Code of 1954. Only the net amount, after allowance of such credit, is required to be paid.

K. STATEMENTS OF FACTS AND REASONS FOR DETERMINATION

1. Nonstatutory statements

When the Board or a regional board makes a determination of excessive profits, and the contractor is unable to decide whether to enter into an agreement for the refund of such excessive profits, the Board or the regional board, as the case may be, upon request of the contractor, furnishes to the contractor a written summary of the facts and reasons upon which such determination is based, in order to assist the contractor in determining whether or not it will enter into an agreement. This summary is not required by the act; it is offered to contractors by regulation of the Board.

2. Statements furnished pursuant to statutory provision

When the Board makes a determination of excessive profits, and such determination is made by order, the Board is required by the act, upon request of the contractor, to furnish to the contractor a statement of such determination, of the facts used as a basis therefor, and of its reasons for such determination. In class B cases, when the Board does not initiate a review of a regional board order, this statement of facts and reasons is furnished by the regional board.

L. REVIEW PROCEDURE

1. In class A cases, every determination of excessive profits made by a regional board is either approved by the Board after acceptance by the contractor or, if not acceptable to the Board or the contractor, is reassigned to the Board for further processing.

2. In class B cases, all determinations of excessive profits made by regional boards by order are reviewable by the Board. Such review may be initiated by the Board either upon its own motion or, in its discretion, at the timely request of the contractor. If a review of a regional board order is not initiated, the order is deemed to be the determination and order of the statutory Board after 90 days.

3. Whenever the Board assumes jurisdiction of a case of either class from a regional board, the Chairman appoints a division consisting of not less than three members of the Board to meet with the contractor and to develop a recommendation for submission to the full Board. Any outstanding legal or accounting questions are decided prior to such submission, if necessary after consultation with the contractor. Thereafter, the Board makes a final determination of

excessive profits, either in the same amount as that determined by the regional board, or in a greater or lesser amount. The determination of the Board, after review, is embodied in an order, a refund agreement, or a clearance agreement or notice.

M. REDETERMINATION PROCEEDING IN TAX COURT

Any contractor aggrieved by an order of the Board determing an amount of excessive profits may file a petition with the Tax Court of the United States for a redetermination thereof. Such a petition must be filed within 90 days after notice of the final action of the Board. The court may determine as the amount of excessive profits an amount less than, equal to, or greater than that determined by the Board. The proceeding in the Tax Court is a proceeding de novo, and the determination made by that court of the amount, if any, of excessive profits is final. The filing of a petition with the court does not stay the execution of the order of the Board unless, within 10 days, the petitioner files a good and sufficient bond.

EXPLANATORY NOTE

This part embodies the Renegotiation Act of 1951 as amended. The original act is printed in roman, amendments are printed in italics with explanatory footnotes. Matter in brackets and footnotes is not a part of the law.

B. RENEGOTIATION ACT OF 1951 AS AMENDED THROUGH SEPTEMBER 6, 1958

[Public Law 9, 82d Cong., approved March 23, 1951, as amended by Public Law 764, 83d Cong., approved September 1, 1954, Public Law 216, 84th Cong., approved August 3, 1955, Public Law 870, 84th Cong., approved August 1, 1956, and Public Law 85–930, 85th Cong., approved September 6, 1958]

To provide for the renegotiation of contracts, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Renegotiation Act of 1951".

TITLE I—RENEGOTIATION OF CONTRACTS

SEC. 101. DECLARATION OF POLICY.

It is hereby recongized and declared that the Congress has made available for the execution of the national defense program extensive funds, by appropriation and otherwise, for the procurement of property, processes, and services, and the construction of facilities necessary for the national defense; that sound execution of the national defense program requires the elimination of excessive profits from contracts made with the United States, and from related subcontracts, in the course of said program; and that the considered policy of the Congress, in the interests of the national defense and the general welfare of the Nation, requires that such excessive profits be eliminated as provided in this title.

SEC. 102. CONTRACTS SUBJECT TO RENEGOTIATION.

(a) In General.—The provisions of this title shall be applicable (1) to all contracts with the Departments specifically named in section 103(a), and related subcontracts, to the extent of the amounts received or accrued by a contractor or subcontractor on or after the first day of January 1951, whether such contracts or subcontracts were made on, before, or after such first day, and (2) to all contracts with the Departments designated by the President under section 103(a), and related subcontracts, to the extent of the amounts received or accrued by a contractor or subcontractor on or after the first day of the first month beginning after the date of such designation, whether such contracts or subcontracts were made on, before, or after such first day.[1]

(b) Performance Prior to July 1, 1950.—Notwithstanding the provisions of subsection (a), the provisions of this title shall not apply to contracts with the Departments, or related subcontracts, to the extent of the amounts received or accrued by a contractor or sub-

[1] Pub. Law 870, 84th Cong., approved August 1, 1956, struck out at this point "; but provisions of this title shall not be applicable to receipts or accruals attributable to performance, under contracts, or subcontracts, after December 31, 1955". The last date was changed from "1953" to "1954" by Pub. Law 764, 83d Cong., approved September 1, 1954, and changed to "1956" by Pub. Law 216, 84th Cong., approved August 3, 1955.

contractor on or after the 1st day of January 1951, which are attributable to performance, under such contracts or subcontracts, prior to July 1, 1950. This subsection shall have no application in the case of contracts, or related subcontracts, which, but for subsection (c), would be subject to the Renegotiation Act of 1948.

(c) TERMINATION.—

(1) IN GENERAL.—The provisions of this title shall apply only with respect to receipts and accruals, under contracts with the Departments and related subcontracts, which are determined under regulations prescribed by the Board to be reasonably attributable to performance prior to the close of the termination date. Notwithstanding the method of accounting employed by the contractor or subcontractor in keeping his records, receipts or accruals determined to be so attributable, even if received or accrued after the termination date, shall be considered as having been received or accrued not later than the termination date. For the purposes of this title, the term "termination date" means June 30, 1959.

(2) TERMINATION OF STATUS AS DEPARTMENT.—When the status of any agency of the Government as a Department within the meaning of section 103(a) is terminated, the provisions of this title shall apply only with respect to receipts and accruals, under contracts with such agency and related subcontracts, which are determined under regulations prescribed by the Board to be reasonably attributable to performance prior to the close of the status termination date. Notwithstanding the method of accounting employed by the contractor or subcontractor in keeping his records, receipts or accruals determined to be so attributable, even if received or accrued after the status termination date, shall be considered as having been received or accrued not later than the status termination date. For the purposes of this paragraph, the term "status termination date" means, with respect to any agency, the date on which the status of such agency as a Department within the meaning of section 103(a) is terminated.[2]

(d) RENEGOTIATION ACT OF 1948.—The Renegotiation Act of 1948 shall not be applicable to any contract or subcontract to the extent of the amounts received or accrued by a contractor or subcontractor on or after the 1st day of January 1951, whether such contract or subcontract was made on, before, or after such first day. In the case of a fiscal year beginning in 1950 and ending in 1951, if a contractor or subcontractor has receipts or accruals prior to January 1, 1951, from contracts or subcontracts subject to the Renegotiation Act of 1948, and also has receipts or accruals after December 31, 1950, to which the provisions of this title are applicable, the provisions of this title shall, notwithstanding subsection (a), apply to such receipts and accruals prior to January 1, 1951, if the Board and such contractor or subcontractor agree to such application of this title; and in the case of such an agreement the provisions of the Renegotiation Act of 1948 shall not apply to any of the receipts or accruals for such fiscal year.

(e) SUSPENSION OF CERTAIN PROFIT LIMITATIONS.—Notwithstanding any agreement to the contrary, the profit-limitation provisions of the Act of March 27, 1934 (48 Stat. 503, 505), as amended and

[2] Subsection (c) of section 102 was added by Pub. Law 870, 84th Cong., approved August 1, 1956, which also relettered former subsections (c) and (d) as (d) and (e), respectively. By Pub. Law 85-930, 85th Cong. approved September 6, 1958, "June 30, 1959" was substituted in subsection (c)(1) for "December 31, 1958".

supplemented, and of section 505(b) of the Merchant Marine Act, 1936, as amended and supplemented (46 U.S.C. 1155(b)), shall not apply, in the case of such Act of March 27, 1934, to any contract or subcontract if any of the receipts or accruals therefrom are subject to this title *or would be subject to this title except for the provisions of section 106(e)*, and, in the case of the Merchant Marine Act, 1936, to any contract or subcontract entered into after December 31, 1950, if any of the receipts or accruals therefrom are subject to this title *or would be subject to this title except for the provisions of section 106(e)*.[3]

SEC. 103. DEFINITIONS.

For the purposes of this title—

(a) DEPARTMENT.—*The term "Department" means the Department of Defense, the Department of the Army, the Department of the Navy, the Department of the Air Force, the Maritime Administration, the Federal Maritime Board, the General Services Administration, the National Aeronautics and Space Administration, and the Atomic Energy Commission. Such term also includes any other agency of the Government exercising functions having a direct and immediate connection with the national defense which is designated by the President during a national emergency proclaimed by the President, or declared by the Congress, after the date of the enactment of the Renegotiation Amendments Act of 1956; but such designation shall cease to be in effect on the last day of the month during which such national emergency is terminated.*[4]

(b) SECRETARY.—The term "Secretary" means the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, the Secretary of Commerce (*with respect to the Maritime Administration*), *the Federal Maritime Board*, the Administrator of General Services, the Administrator of the National Aeronautics and Space Administration, the Atomic Energy Commission, and the head of any other agency of the Government which the President shall designate *as a Department* pursuant to subsection (a) of this section.[5]

(c) BOARD.—The term "Board" means the Renegotiation Board created by section 107(a) of this Act.

(d) RENEGOTIATE AND RENEGOTIATION.—The terms "renegotiate" and "renegotiation" include a determination by agreement or order under this title of the amount of any excessive profits.

(e) EXCESSIVE PROFITS.—The term "excessive profits" means the portion of the profits derived from contracts with the Departments

[3] Matter in italics in section 102(e) was added by Pub. Law 216, 84th Cong., approved August 3, 1955, as amended by Pub. Law 870, 84th Cong., approved August 1, 1956, and applies only to the extent of amounts received or accrued after December 31, 1953. Pub. Law 870 changed "section 106(a)(8)" to "section 106(e)" with respect to fiscal years ending after June 30, 1956.

[4] Section 103(a) was amended as shown by Pub. Law 870, 84th Cong., approved August 1, 1956. The amendment, effective December 31, 1956, struck out the Department of Commerce, the Reconstruction Finance Corporation, the Canal Zone Government, the Panama Canal Company, the Housing and Home Finance Agency, and such other agencies of the Government as were designated by the President under the former subsection (a). Federal Civil Defense Administration, National Advisory Committee for Aeronautics, Tennessee Valley Authority, and U.S. Coast Guard were designated by Executive Order 10260, dated June 27, 1951; Defense Materials Procurement Agency, Bureau of Mines, and (United States) Geological Survey by Executive Order 10294, September 28, 1951; Bonneville Power Administration by Executive Order 10299, October 31, 1951; Bureau of Reclamation by Executive Order 10369, June 30, 1952; and Federal Facilities Corporation by Executive Order 10567, September 29, 1954. Section 103(a) was further amended by Pub. Law 85-930, 85th Cong., approved September 8, 1958, which added "the National Aeronautics and Space Administration".

[5] Matter in italics in section 103(b) was added by Pub. Law 870, 84th Cong., approved August 1, 1956, which also changed "the Chairman of the Atomic Energy Commission" to "the Atomic Energy Commission" and struck out the Board of Directors of the Reconstruction Finance Corporation, the Governor of the Canal Zone, the President of the Panama Canal Company, and the Housing and Home Finance Administrator, all effective on December 31, 1956. Pub. Law 85-930, 85th Cong., approved September 6, 1958, added "the Administrator of the National Aeronautics and Space Administration."

and subcontracts which is determined in accordance with this title to be excessive. In determining excessive profits favorable recognition must be given to the efficiency of the contractor or subcontractor, with particular regard to attainment of quantity and quality production, reduction of costs, and economy in the use of materials, facilities, and manpower; and in addition, there shall be taken into consideration the following factors:

(1) Reasonableness of costs and profits, with particular regard to volume of production, normal earnings, and comparison of war and peacetime products;

(2) The net worth, with particular regard to the amount and source of public and private capital employed;

(3) Extent of risk assumed, including the risk incident to reasonable pricing policies;

(4) Nature and extent of contribution to the defense effort, including inventive and developmental contribution and cooperation with the Government and other contractors in supplying technical assistance;

(5) Character of business, including source and nature of materials, complexity of manufacturing technique, character and extent of subcontracting, and rate of turn-over;

(6) Such other factors the consideration of which the public interest and fair and equitable dealing may require, which factors shall be published in the regulations of the Board from time to time as adopted.

(f) PROFITS DERIVED FROM CONTRACTS WITH THE DEPARTMENTS AND SUBCONTRACTS.—The term "profits derived from contracts with the Departments and subcontracts" means the excess of the amount received or accrued under such contracts and subcontracts over the costs paid or incurred with respect thereto and determined to be allocable thereto. All items estimated to be allowed as deductions and exclusions under chapter 1 of the Internal Revenue Code (excluding taxes measured by income) shall, to the extent allocable to such contracts and subcontracts, be allowed as items of cost, except that no amount shall be allowed as an item of cost by reason of the application of a carry-over or carry-back. Notwithstanding any other provision of this section, there shall be allowed as an item of cost in any fiscal year *ending before December 31, 1956*,[6] subject to regulations of the Board, an amount equal to the excess, if any, of costs (computed without the application of this sentence) paid or incurred in the preceding fiscal year with respect to receipts or accruals subject to the provisions of this title over the amount of receipts or accruals subject to the provisions of this title which were received or accrued in such preceding fiscal year, but only to the extent that such excess did not result from gross inefficiency of the contractor or subcontractor. For the purposes of the preceding sentence, the term "preceding fiscal year" does not include any fiscal year ending prior to January 1, 1951. Costs shall be determined in accordance with the method of accounting regularly employed by the contractor or subcontractor in keeping his records, but, if no such method of accounting has been employed, or if the method so employed does not, in the opinion of the Board, or, upon redetermination, in the opinion of The Tax Court of the United

[6] Matter in italics in section 103 (f) was added by Pub. Law 870, 84th Cong., approved August 1, 1956.

States, properly reflect such costs, such costs shall be determined in accordance with such method as in the opinion of the Board, or, upon redetermination, in the opinion of The Tax Court of the United States, does properly reflect such costs. In determining the amount of excessive profits to be eliminated, proper adjustment shall be made on account of the taxes measured by income, other than Federal taxes, which are attributable to the portion of the profits which are not excessive.

(g) SUBCONTRACT.—The term "subcontract" means—

(1) any purchase order or agreement (including purchase orders or agreements antedating the related prime contract or higher tier subcontract) to perform all or any part of the work, or to make or furnish any materials, required for the performance of any other contract or subcontract, but such term does not include any purchase order or agreement to furnish office supplies;

(2) any contract or arrangement covering the right to use any patented or secret method, formula, or device for the performance of a contract or subcontract; and

(3) any contract or arrangement (other than a contract or arrangement between two contracting parties, one of whom is found by the Board to be a bona fide executive officer, partner, or full-time employee of the other contracting party) under which—

(A) any amount payable is contingent upon the procurement of a contract or contracts with a Department or of a subcontract or subcontracts; or

(B) any amount payable is determined with reference to the amount of a contract or contracts with a Department or of a subcontract or subcontracts; or

(C) any part of the services performed or to be performed consists of the soliciting, attempting to procure, or procuring a contract or contracts with a Department or a subcontract or subcontracts.

Nothing in this subsection shall be construed (i) to affect in any way the validity or construction of provisions in any contract with a Department or any subcontract, heretofore at any time or hereafter made, prohibiting the payment of contingent fees or commissions; or (ii) to restrict in any way the authority of the Board to determine the nature or amount of selling expense under subcontracts as defined in this subsection, as a proper element of the contract price or as a reimbursable item of cost, under a contract with a Department or a subcontract.

(h) FISCAL YEAR.—The term "fiscal year" means the taxable year of the contractor or subcontractor under chapter 1 of the Internal Revenue Code, except that where any readjustment of interests occurs in a partnership as defined in section 3797(a)(2) of such code, the fiscal year of the partnership or partnerships involved in such readjustment shall be determined in accordance with regulations prescribed by the Board.

(i) RECEIVED OR ACCRUED AND PAID OR INCURRED.—The terms "received or accrued" and "paid or incurred" shall be construed according to the method of accounting employed by the contractor or subcontractor in keeping his records, but if no such method of accounting has been employed, or if the method so employed does not, in the

opinion of the Board, or, upon redetermination, in the opinion of The Tax Court of the United States, properly reflect his receipts or accruals or payments or obligations, such receipts or accruals or such payments or obligations shall be determined in accordance with such method as in the opinion of the Board, or, upon redetermination, in the opinion of The Tax Court of the United States, does properly reflect such receipts or accruals or such payments or obligations.

(j) PERSON.—The term "person" shall include an individual, firm, corporation, association, partnership, and any organized group of persons whether or not incorporated.

(k) MATERIALS.—The term "materials" shall include raw materials, articles, commodities, parts, assemblies, products, machinery, equipment, supplies, components, technical data, processes, and other personal property.

(l) AGENCY OF THE GOVERNMENT.—The term "agency of the Government" means any part of the executive branch of the Government or any independent establishment of the Government or part thereof, including any department (whether or not a Department as defined in subsection (a) of this section), any corporation wholly or partly owned by the United States which is an instrumentality of the United States, or any board, bureau. division, service, office, officer, employee, authority, administration, or other establishment of the Government which is not a part of the legislative or judicial branches.

(m) TWO-YEAR LOSS CARRYFORWARD.—

(1) ALLOWANCE.—Notwithstanding any other provision of this section, the renegotiation loss deduction for any fiscal year ending on or after December 31, 1956, shall be allowed as an item of cost in such fiscal year, under regulations of the Board.

(2) DEFINITIONS.—For the purposes of this subsection.—

(A) The term "renegotiation loss deduction" means, for any fiscal year ending on or after December 31, 1956, the sum of the renegotiation loss carryforwards to such fiscal year from the preceding two fiscal years.

(B) The term "renegotiation loss" means, for any fiscal year, the excess, if any, of costs computed without the application of this subsection and the third sentence of subsection (f) paid or incurred in such fiscal year with respect to receipts or accruals subject to the provisions of this title over the amount of receipts or accruals subject to the provisions of this title which were received or accrued in such fiscal year, but only to the extent that such excess did not result from gross inefficiency of the contractor or subcontractor.

(3) AMOUNT OF CARRYFORWARDS.—A renegotiation loss for any fiscal year (hereinafter in this paragraph referred to as the "loss year") shall be a renegotiation loss carryforward to the first fiscal year succeeding the loss year. Such renegotiation loss, after being reduced (but not below zero) by the profits derived from contracts with the Departments and subcontracts in the first fiscal year succeeding the loss year, shall be a renegotiation loss carryforward to the second fiscal year succeeding the loss year. For the purposes of the preceding sentence, the profits derived from contracts with the Departments and subcontracts in the first fiscal year succeeding the loss year shall be computed as follows:

(A) If such first fiscal year ends on or after December 31, 1956, such profits shall be computed by determining the amount

of the renegotiation loss deduction for such first fiscal year without regard to the renegotiation loss for the loss year.

(B) If such first fiscal year ends before December 31, 1956, such profits shall be computed without regard to any renegotiation loss for the loss year or any fiscal year preceding the loss year.[7]

SEC. 104. RENEGOTIATION CLAUSE IN CONTRACTS.

Subject to section 106(a) the Secretary of each Department specifically named in section 103(a) shall insert in each contract made by such Department thirty days or more after the date of the enactment of this Act, and the Secretary of each Department designated by the President under section 103(a) shall insert in each contract made by such Department thirty days or more after the date of such designation, a provision under which the contractor agrees—

(1) to the elimination of excessive profits through renegotiation;

(2) that there may be withheld by the United States from amounts otherwise due the contractor, or that he will repay to the United States, if paid to him, any excessive profits;

(3) that he will insert in each subcontract described in section 103(g) a provision under which the subcontractor agrees—

(A) to the elimination of excessive profits through renegotiation;

(B) that there may be withheld by the contractor for the United States from amounts otherwise due to the subcontractor, or that the subcontractor will repay to the United States, if paid to him, any excessive profits;

(C) that the contractor shall be relieved of all liability to the subcontractor on account of any amount so withheld, or so repaid by the subcontractor to the United States;

(D) that he will insert in each subcontract described in section 103(g) provisions corresponding to those of subparagraphs (A), (B), and (C), and to those of this subparagraph;

(4) that there may be withheld by the United States from amounts otherwise due the contractor, or that he will repay to the United States, as the Secretary may direct, any amounts which under section 105(b)(1)(C) the contractor is directed to withhold from a subcontractor and which are actually unpaid at the time the contractor receives such direction.

The obligations assumed by the contractor or subcontractor under paragraph (1) or (3) (A), as the case may be, agreeing to the elimination of excessive profits through renegotiation shall be binding on him only if the contract or subcontract, as the case may be, is subject to this title. A provision inserted in a contract or subcontract, which recites in substance that the contract or subcontract shall be deemed to contain all the provisions required by this section shall be sufficient compliance with this section. Whether or not the provisions specified in this section are inserted in a contract with a Department or subcontract, to which this title is applicable, such contract or subcontract, as the case may be, shall be considered as having been made subject to this title in the same manner and to the same extent as if such provisions had been inserted.

[7] Section 103(m) was added by Pub. Law 870, 84th Cong., approved August 1, 1956.

SEC. 105. RENEGOTIATION PROCEEDINGS.

(a) PROCEEDINGS BEFORE THE BOARD.—Renegotiation proceeding shall be commenced by the mailing of notice to that effect, in such form as may be prescribed by regulation, by registered mail to the contractor or subcontractor. The Board shall endeavor to make an agreement with the contractor or subcontractor with respect to the elimination of excessive profits received or accrued, and with respect to such other matters relating thereto as the Board deems advisable. Any such agreement, if made, may, with the consent of the contractor or subcontractor, also include provisions with respect to the elimination of excessive profits likely to be received or accrued. If the Board does not make an agreement with respect to the elimination of excessive profits received or accrued, it shall issue and enter an order determining the amount, if any, of such excessive profits, and forthwith give notice thereof by registered mail to the contractor or subcontractor. In the absence of the filing of a petition with The Tax Court of the United States under the provisions of and within the time limit prescribed in section 108, such order shall be final and conclusive and shall not be subject to review or redetermination by any court or other agency. The Board shall exercise its powers with respect to the aggregate of the amounts received or accrued during the fiscal year (or such other period as may be fixed by mutual agreement) by a contractor or subcontractor under contracts with the Departments and subcontracts, and not separately with respect to amounts received or accrued under separate contracts with the Departments or subcontracts, except that the Board may exercise such powers separately with respect to amounts received or accrued by the contractor or subcontractor under any one or more separate contracts with the Departments or subcontracts at the request of the contractor or subcontractor. By agreement with any contractor or subcontractor, and pursuant to regulations promulgated by it, the Board may in its discretion conduct renegotiation on a consolidated basis in order properly to reflect excessive profits of two or more related contractors or subcontractors. Renegotiation shall be conducted on a consolidated basis with a parent and its subsidiary corporations which constitute an affiliated group under section 141 (d) of the Internal Revenue Code if all of the corporations included in such affiliated group request renegotiation on such basis and consent to such regulations as the Board shall prescribe with respect to (1) the determination and elimination of excessive profits of such affiliated group, and (2) the determination of the amount of the excessive profits of such affiliated group allocable, for the purposes of section 3806 of the Internal Revenue Code, to each corporation included in such affiliated group. Whenever the Board makes a determination with respect to the amount of excessive profits, and such determination is made by order, it shall, at the request of the contractor or subcontractor, as the case may be, prepare and furnish such contractor or subcontractor with a statement of such determination, of the facts used as a basis therefor, and of its reasons for such determination. Such statement shall not be used in The Tax Court of the United States as proof of the facts or conclusions stated therein.

(b) METHODS OF ELIMINATING EXCESSIVE PROFITS.—

(1) IN GENERAL.—Upon the making of an agreement, or the entry of an order, under subsection (a) of this section by the

Board, or the entry of an order under section 108 by The Tax Court of the United States, determining excessive profits, the Board shall forthwith authorize and direct the Secretaries or any of them to eliminate such excessive profits—

(A) by reductions in the amounts otherwise payable to the contractor under contracts with the Departments, or by other revision of their terms;

(B) by withholding from amounts otherwise due to the contractor any amount of such excessive profits;

(C) by directing any person having a contract with any agency of the Government, or any subcontractor thereunder, to withhold for the account of the United States from any amounts otherwise due from such person or such subcontractor to a contractor, or subcontractor, having excessive profits to be eliminated, and every such person or subcontractor receiving such direction shall withhold and pay over to the United States the amounts so required to be withheld;

(D) by recovery from the contractor or subcontractor, or from any person or subcontractor directed under subparagraph (C) to withhold for the account of the United States, through payment, repayment, credit, or suit any amount of such excessive profits realized by the contractor or subcontractor or directed under subparagraph (C) to be withheld for the account of the United States; or

(E) by any combination of these methods, as is deemed desirable.

(2) INTEREST.—Interest at the rate of 4 per centum per annum shall accrue and be paid on the amount of such excessive profits from the thirtieth day after the date of the order of the Board or from the date fixed for repayment by the agreement with the contractor or subcontractor to the date of repayment, and on amounts required to be withheld by any person or subcontractor for the account of the United States pursuant to paragraph (1) (C), from the date payment is demanded by the Secretaries or any of them to the date of payment. When The Tax Court of the United States, under section 108, redetermines the amount of excessive profits received or accrued by a contractor or subcontractor, interest at the rate of 4 per centum per annum shall accrue and be paid by such contractor or subcontractor as follows:

(A) When the amount of excessive profits determined by the Tax Court is greater than the amount determined by the Board, interest shall accrue and be paid on the amount determined by the Board from the thirtieth day after the date of the order of the Board to the date of repayment and, in addition thereto, interest shall accrue and be paid on the additional amount determined by the Tax Court from the date of its order determining such excessive profits to the date of repayment.

(B) When the amount of excessive profits determined by the Tax Court is equal to the amount determined by the Board, interest shall accrue and be paid on such amount from the thirtieth day after the date of the order of the Board to the date of repayment.

(C) When the amount of excessive profits determined by the Tax Court is less than the amount determined by the Board, interest shall accrue and be paid on such lesser amount from the thirtieth day after the date of the order of the Board to the date of repayment, except that no interest shall accrue or be payable on such lesser amount if such lesser amount is not in excess of an amount which the contractor or subcontractor tendered in payment prior to the issuance of the order of the Board.

Notwithstanding the provisions of this paragraph, no interest shall accrue after three years from the date of filing a petition with the Tax Court pursuant to section 108 of this title in any case in which there has not been a final determination by the Tax Court with respect to such petition within such three-year period.

(3) SUITS FOR RECOVERY.—Actions on behalf of the United States may be brought in the appropriate courts of the United States to recover, (A) from the contractor or subcontractor, any amount of such excessive profits and accrued interest not wi hheld or eliminated by some other method under this subsection, and (B) from any person or subcontractor who has been directed under paragraph (1) (C) of this subsection to withhold for the account of the United States, the amounts required to be withheld under such paragraph, together with accrued interest thereon.

(4) SURETIES.—The surety under a contract or subcontract shall not be liable for the repayment of any excessive profits thereon.

(5) ASSIGNEES.—Nothing herein contained shall be construed (A) to authorize any Department or agency of the Government, except to the extent provided in the Assignment of Claims Act of 1940, as now or hereafter amended, to withhold from any assignee referred to in said Act, any moneys due or to become due, or to recover any moneys paid, to such assignee under any contract with any Department or agency where such moneys have been assigned pursuant to such Act, or (B) to authorize any Department or agency of the Government to direct the withholding pursuant to this Act, or to recover pursuant to this Act, from any bank, trust company or other financing institution (including any Federal lending agency) which is an assignee under any subcontract, any moneys due or to become due or paid to any such assignee under such subcontract.

(6) INDEMNIFICATION.—Each person is hereby idemnified by the United States against all claims on account of amounts withheld by such person pursuant to this subsection from a contractor or subcontractor and paid over to the United States.

(7) TREATMENT OF RECOVERIES.—All money recovered by way of repayment or suit under this subsection shall be covered into the Treasury as miscellaneous receipts. Upon the withholding of any amount of excessive profits or the crediting of any amount of excessive profits against amounts otherwise due a contractor from appropriations from the Treasury, the Secretary shall certify the amount thereof to the Treasury and the appropriations of his Department shall be reduced by an amount equal to the amount so withheld or credited. The amount of such reductions shall be transferred to the surplus fund of the Treasury.

(8) CREDIT FOR TAXES PAID.—In eliminating excessive profits, the Secretary shall allow the contractor or subcontractor credit for Federal income and excess profits taxes as provided in section 3806 of the Internal Revenue Code.

(c) PERIODS OF LIMITATIONS.—*In the absence of fraud or malfeasance or willful misrepresentation of a material fact,* no proceeding to determine the amount of excessive profits for any fiscal year shall be commenced more than one year after *a financial statement* under subsection (e)(1) of this section is filed with the Board with respect to such year, and, *in the absence of fraud or malfeasance or willful misrepresentation of a material fact,* if such proceeding is not commenced prior to the expiration of one year following the date upon which such statement is so filed, all liabilities of the contractor or subcontractor for excessive profits received or accrued during such fiscal year shall thereupon be discharged. If an agreement or order determining the amount of excessive profits is not made within two years following the commencement of the renegotiation proceeding, then, *in the absence of fraud or malfeasance or willful misrepresentation of a material fact,* upon the expiration of such two years all liabilities of the contractor or subcontractor for excessive profits with respect to which such proceeding was commenced shall thereupon be discharged, except that (1) if an order is made within such two years pursuant to a delegation of authority under subsection (d) of section 107, such two-year limitation shall not apply to review of such order by the Board, and (2) such two-year period may be extended by mutual agreement.[8]

(d) AGREEMENTS TO ELIMINATE EXCESSIVE PROFITS.—For the purposes of this title the Board may make final or other agreements with a contractor or subcontractor for the elimination of excessive profits and for the discharge of any liability for excessive profits under this title. Such agreements may contain such terms and conditions as the Board deems advisable. Any such agreement shall be conclusive according to its terms; and, except upon a showing of fraud or malfeasance or a willful misrepresentation of a material fact, (1) such agreement shall not for the purposes of this title be reopened as to the matters agreed upon, and shall not be modified by any officer, employee, or agent of the United States, and (2) such agreement and any determination made in accordance therewith shall not be annulled, modified, set aside, or disregarded in any suit, action, or proceeding. Notwithstanding any other provisions of this title, however, the Board shall have the power, pursuant to regulations promulgated by it, to modify any agreement or order for the purpose of extending the time for payment of sums due under such agreement or order, *and shall also have the power to set aside and declare null and void any such agreement if, upon a request made to the Board within three years from the date of such agreement, the Board finds as a fact that the aggregate of the amounts received or accrued by the other party to such agreement during the fiscal year covered by such agreement was not more than the minimum amounts subject to renegotiation specified in section 105 (f) for such fiscal year.*[9]

[8] Matter in italics in section 105 (c) was added by Pub. Law 870, 84th Cong., approved August 1, 1956. The words "a financial statement" were substituted for "the statement required". These amendments apply only with respect to fiscal years ending after June 30, 1956.

[9] Matter in italics in section 105 (d) was added by Pub. Law 764, 83d Cong., approved September 1, 1954. This amendment is effective as if it were a part of the Renegotiation Act of 1951 on the date of its enactment.

(e) INFORMATION AVAILABLE TO BOARD.—

(1) FURNISHING OF FINANCIAL STATEMENTS, ETC.—Every person who holds contracts or subcontracts, to which the provisions of this title are applicable, shall, in such form and detail as the Board may by regulations prescribe, file with the Board, on or before the first day of the *fifth* calendar month following the close of his fiscal year, a financial statement setting forth such information as the Board may by regulations prescribe as necessary to carry out this title. *The preceding sentence shall not apply to any such person with respect to a fiscal year if the aggregate of the amounts received or accrued under such contracts and subcontracts during such fiscal year by him, and all persons under control of or controlling or under common control with him, is not more than the applicable amount prescribed in subsection (f) (1) or (2) of this section; but any person to whom this sentence applies may, if he so elects, file with the Board for such fiscal year a financial statement setting forth such information as the Board may by regulations prescribe as necessary to carry out this title. The Board may require any person who holds contracts or subcontracts to which the provisions of this title are applicable (whether or not such person has filed a financial statement under this paragraph) to furnish any information, records, or data which are determined by the Board to be necessary to carry out this title and which the Board specifically requests such person to furnish. Such information, records, or data may not be required with respect to any fiscal year after the date on which all liabilities of such person for excessive profits received or accrued during such fiscal year are discharged. Any person who willfully fails or refuses to furnish any statement, information, records, or data required of him under this subsection, or who knowingly furnishes any statement, information, records, or data pursuant to this subsection containing information which is false or misleading in any material respect, shall, upon conviction thereof, be punished by a fine of not more than $10,000 or imprisonment for not more than one year, or both.*[10]

(2) AUDIT OF BOOKS AND RECORDS.—For the purpose of this title, the Board shall have the right to audit the books and records of any contractor or subcontractor subject to this title. In the interest of economy and the avoidance of duplication of inspection and audit, the services of the Bureau of Internal Revenue shall, upon request of the Board and the approval of the Secretary of the Treasury, be made available to the extent determined by the Secretary of the Treasury for the purpose of making examinations and audits under this title.

(f) MINIMUM AMOUNTS SUBJECT TO RENEGOTIATION.—

(1) IN GENERAL.—If the aggregate of the amounts received or accrued during a fiscal year (and on or after the applicable effective date specified in section 102(a)) by a contractor or subcontractor, and all persons under control of or controlling or under common control with the contractor or subcontractor, under contracts with the Departments and subcontracts described in section 103(g) (1) and (2), is not more than $250,000, *in the case of a*

[10] Matter in italics in section 105(e)(1) was added by Pub. Law 870, 84th Cong., approved August 1, 1956, which also struck out the second and third sentences of the former paragraph (1). The word "fifth" was substituted for "fourth" in the first sentence. These amendments apply only with respect to fiscal years ending after June 30, 1956.

fiscal year ending before June 30, 1953, or $500,000, in the case of a fiscal year ending on or after June 30, 1953, or $1,000,000, in the case of a fiscal year ending after June 30, 1956, the receipts or accruals from such contracts and subcontracts shall not, for such fiscal year, be renegotiated under this title. If the aggregate of such amounts received or accrued during the fiscal year under such contracts and subcontracts is more than $250,000, *in the case of a fiscal year ending before June 30, 1953, or $500,000 in the case of a fiscal year ending on or after June 30, 1953, or $1,000,000, in the case of a fiscal year ending after June 30, 1956,* no determination of excessive profits to be eliminated for such year with respect to such contracts and subcontracts shall be in an amount greater than the amount by which such aggregate exceeds $250,000, *in the case of a fiscal year ending before June 30, 1953, or $500,000, in the case of a fiscal year ending on or after June 30, 1953, or $1,000,000, in the case of a fiscal year ending after June 30, 1956.*[11]

(2) SUBCONTRACTS DESCRIBED IN SECTION 103(g)(3).—If the aggregate of the amounts received or accrued during a fiscal year (and on or after the applicable effective date specified in section 102(a)) by a subcontractor, and all persons under control of or controlling or under common control with the subcontractor, under subcontracts described in section 103(g)(3) is not more than $25,000, the receipts or accruals from such subcontracts shall not, for such fiscal year, be renegotiated under this title. If the aggregate of such amounts received or accrued during the fiscal year under such subcontracts is more than $25,000, no determination of excessive profits to be eliminated for such year with respect to such subcontracts shall be in an amount greater than the amount by which such aggregate exceeds $25,000.

(3) COMPUTATION.—In computing the aggregate of the amounts received or accrued during any fiscal year for the purposes of *paragraph (1)* of this subsection, there shall be eliminated all amounts received or accrued by a contractor or subcontractor from all persons under control of or controlling or under common control with the contractor or subcontractor and all amounts received or accrued by each such person from such contractor or subcontractor and from each other such person. If the fiscal year is a fractional part of twelve months, the $250,000 amount, *the $500,000 amount, the $1,000,000 amount,* and the $25,000 amount shall be reduced to the same fractional part thereof of the purposes of paragraphs (1) and (2). In the case of a fiscal year beginning in 1950 and ending in 1951, the $250,000 amount and the $25,000 amount shall be reduced to an amount which bears the same ratio to $250,000 or $25,000, as the case may be, as the number of days in such fiscal year after December 31, 1950, bears to 365, but this sentence shall have no application if the contractor or subcontractor has made an agreement with the Board pursuant to section 102(c) for the application of the provisions of this title to receipts or accruals prior to January 1, 1951, during such fiscal year. *In the case of a fiscal year beginning on or before the termination date and ending after the termination*

[11] Matter in italics in section 105(f)(1) was added by Pub. Law 764, 83d Cong., approved September 1, 1954, as amended by Pub. Law 870, 84th Cong., approved August 1, 1956. The latter amendment added the references to $1,000,000 for fiscal years ending after June 30, 1956.

date, the $1,000,000 amount and the $25,000 amount shall be reduced to an amount which bears the same ratio of $1,000,000 or $25,000, as the case may be, as the number of days in such fiscal year before the close of the termination date bears to 365.[12]

SEC. 106. EXEMPTIONS.

(a) MANDATORY EXEMPTIONS.—The provisions of this title shall not apply to—

(1) any contract by a Department with any Territory, possession, or State, or any agency or political subdivision thereof, or with any foreign government or any agency thereof; or

(2) any contract or subcontract for an agricultural commodity in its raw or natural state, or if the commodity is not customarily sold or has not an established market in its raw or natural state, in the first form or state, beyond the raw or natural state, in which it is customarily sold or in which it has an established market. The term "agricultural commodity" as used herein shall include but shall not be limited to—

(A) commodities resulting from the cultivation of the soil such as grains of all kinds, fruits, nuts, vegetables, hay, straw, cotton, tobacco, sugarcane, and sugar beets;

(B) natural resins, saps, and gums of trees;

(C) animals, such as cattle, hogs, poultry, and sheep, fish and other marine life, and the produce of live animals, such as wool, eggs, milk and cream; or

(3) any contract or subcontract for the product of a mine, oil or gas well, or other mineral or natural deposit, or timber, which has not been processed, refined, or treated beyond the first form or state suitable for industrial use; or

(4) any contract or subcontract with a common carrier for transportation, or with a public utility for gas, electric energy, water, communications, or transportation, when made in either case at rates not in excess of published rates or charges filed with, fixed, approved, or regulated by a public regulatory body, State, Federal, or local, or at rates not in excess of unregulated rates of such a public utility which are substantially as favorably to users and consumers as are regulated rates. In the case of the furnishing or sale of transportation by common carrier by water, this paragraph shall apply only to such furnishing or sale which is subject to the jurisdiction of the Interstate Commerce Commission under Part III of the Interstate Commerce Act or subject to the jurisdiction of the Federal Maritime Board under the Intercoastal Shipping Act, 1933, *and to such furnishing or sale in any case in which the Board finds that the regulatory aspects of rates for such furnishing or sale, or the type and nature of the contract for such furnishing or sale, are such as to indicate, in the opinion of the Board, that excessive profits are improbable; or* [13]

(5) any contract or subcontract with an organization exempt from taxation under section 101 (6) of the Internal Revenue

[12] Pub. Law 764, 83d Cong., approved September 1, 1954, added "the $500,000 amount" in the second sentence of section 105(f)(3). Pub. Law 870, 84th Cong., approved August 1, 1956, substituted "paragraph (1)" for "paragraphs (1) and (2)" in the first sentence; added "the $1,000,000 amount" in the second sentence; and added the last sentence. The amendment substituting "paragraph (1)" applies only to fiscal years ending on or after June 30, 1956.

[13] Matter in italics in section 106 (a) (4) was added by Pub. Law 764, 83d Cong., approved September 1, 1954, and applies only with respect to fiscal years ending on or after December 31, 1953.

Code, but only if the income from such contract or subcontract is not includible under section 422 of such code in computing the unrelated business net income of such organization; or

(6) any contract which the Board determines does not have a direct and immediate connection with the national defense. The Board shall prescribe regulations designating those classes and types of contracts which shall be exempt under this paragraph; and the Board shall, in accordance with regulations prescribed by it, exempt any individual contract not falling within any such class or type if it determines that such contract does not have a direct and immediate connection with the national defense. *In designating these classes and types of contracts which shall be exempt and in exempting any individual contract under this paragraph, the Board shall consider as not having a direct or immediate connection with national defense any contract for the furnishing of materials or services to be used by the United States, a Department or agency thereof, in the manufacture and sale of synthetic rubbers to a private person or to private persons which are to be used for nondefense purposes. If the use by such private person or persons shall be partly for defense and partly for nondefense purposes, the Board shall consider as not having a direct or immediate connection with national defense that portion of the contract which is determined not to have been used for national defense purposes. The method used in making such determination shall be subject to approval by the Board.* Notwithstanding section 108 of this title, regulations prescribed by the Board under this paragraph, and any determination of the Board that a contract is or is not exempt under this paragraph, shall not be reviewed or redetermined by the Tax Court or by any other court or agency; or [14]

(7) any subcontract directly or indirectly under a contract or subcontract to which this title does not apply by reason of *any paragraph, other than paragraph (1), (5), or (8),* of this subsection; *or* [15]

[Applicable to fiscal years ending on or before June 30, 1956. See footnote 16.]

(8) any contract or subcontract for the making or furnishing of a standard commercial article or a standard commercial service, unless the Board makes a specific finding that competitive conditions affecting the sale of such article or such service are such as will not reasonably prevent excessive profits. This paragraph shall apply to any such contract or subcontract only if (1) the contractor or subcontractor files, at such time and in such form and detail as the Board shall by regulations prescribe, such information and data as may be required by the Board under its regulations for the purpose of enabling it to reach a decision with respect to the making of specific finding under this paragraph, and (2) within a period of six months after the date of filing of such information and data,

[14] Matter in italics in section 106 (a) (6) was added by Pub. Law 764, 83d Cong., approved September 1, 1954. This amendment is effective as if it were a part of the Renegotiation Act of 1951 on the date of its enactment.

[15] Matter in italics in section 106 (a) (7) was added by Pub. Law 764, 83d Cong., approved September 1, 1954, as amended by Pub. Law 870, 84th Cong., approved August 1, 1956. The former amendment limited the exclusion to paragraph (8) and applies only to the extent of amounts received or accrued after December 31, 1953. The latter amendment added the references to paragrpahs (1) and (5), and applies ouly with respect to subcontracts made after June 30, 1956.

the Board fails to make a specific finding that competitive conditions affecting the sale of such article or such service are such as will not reasonably prevent excessive profits, or (3) within such six-month period, the Board makes a specific finding that competitive conditions affecting the sale of such article or such service are such as will reasonably prevent excessive profits. Any contractor or subcontractor may waive the exemption provided in this paragraph with respect to receipts or accruals in any fiscal year by including a statement to such effect in the financial statement filed by such contractor or subcontractor for such fiscal year pursuant to section 105(e)(1). Any specific finding of the Board under this paragraph shall not be reviewed or redetermined by any court or agency other than by the Tax Court of the United States in a proceeding for a redetermination of the amount of excessive profits determined by an order of the Board. For the purpose of this paragraph—

(A) the term "article" includes any material, part, component, assembly, machinery, equipment, or other personal property;

(B) the term "standard commercial article" means an article—

(1) which, in the normal course of business, is customarily manufactured for stock, and is customarily maintained in stock by the manufacturer or any dealer, distributor, or other commercial agency for the marketing of such article; or

(2) which is manufactured and sold by more than two persons for general civilian industrial or commercial use, or which is identical in every material respect with an article so manufactured and sold;

(C) the term "identical in esery material respect" means of the same kind, manufactured of the same or substitute materials, and having the same industrial or commercial use or uses, without necessarily being of identical specifications;

(D) the term "service" means any processing or other operation performed by chemical, electrical, physical, or mechanical methods directly on materials owned by another person;

(E) the term "standard commercial service" means a service which is customarily performed by more than two persons for general civilian industrial or commercial requirements, or is reasonably comparable with a service so performed;

(F) the term "reasonably comparable" means of the same or a similar kind, performed with the same or similar materials, and having the same or a similar result, without necessarily involving identical operations; and

(G) the term "persons" does not include any person under control of, or controlling, or under common control with any other person considered for the purposes of subparagraph (B) (2) of this paragraph.[16]

[16] Paragraph (8) of section 106 (a) was added by Pub. Law 764, 83d Cong., approved September 1, 1954 as amended by Pub. Law 216, 84th Cong., approved August 3, 1955. The latter amendment added the references to standard commercial services. These amendments apply only to the extent of amounts received or accrued after December 31, 1953. Pub. Law 870, 84th Cong., approved August 1, 1956, struck out paragraph (8) with respect to fiscal years ending after June 30, 1956 and added section 106 (e) with respect to such fiscal years. Therefore, section 106 (a) (8) applies to contracts and subcontracts only to the extent of amounts received or accrued after December 31, 1953, in fiscal years ending on or before June 30, 1956.

(9) any contract, awarded as a result of competitive bidding, for the construction of any building, structure, improvement, or facility, other than a contract for the construction of housing financed with a mortgage or mortgages insured under the provisions of title VIII of the National Housing Act, as now or hereafter amended.[17]

(b) COST ALLOWANCE.—In the case of a contractor or subcontractor who produces or acquires the product of a mine, oil or gas well, or other mineral or natural deposit, or timber, and processes, refines, or treats such a product to and beyond the first form or state suitable for industrial use, or who produces or acquires an agricultural product and processes, refines, or treats such a product to and beyond the first form or state in which it is customarily sold or in which it has an established market, the Board shall prescribe such regulations as may be necessary to give such contractor or subcontractor a cost allowance substantially equivalent to the amount which would have been realized by such contractor or subcontractor if he had sold such product at such first form or state. Notwithstanding any other provisions of this title, there shall be excluded from consideration in determining whether or not a contractor or subcontractor has received or accrued excessive profits that portion of the profits, derived from receipts and accruals subject to the provisions of this title, attributable to the increment in value of the excess inventory. For the purposes of this subsection the term "excess inventory" means inventory of products, hereinbefore described in this subsection, acquired by the contractor or subcontractor in the form or at the state in which contracts for such products on hand or on contract would be exempted from this title by subsection (a) (2) or (3) of this section, which is in excess of the inventory reasonably necessary to fulfill existing contracts or orders. That portion of the profits, derived from receipts and accruals subject to the provisions of this title, attributable to the increment in value of the excess inventory, and the method of excluding such portion of profits from consideration in determining whether or not the contractor or subcontractor has received or accrued excessive profits, shall be determined in accordance with regulations prescribed by the Board.

(c) PARTIAL MANDATORY EXEMPTION FOR DURABLE PRODUCTIVE EQUIPMENT.—

[Applicable to fiscal years ended before June 30, 1953. See footnote 18]

(1) IN GENERAL.—The provisions of this title shall not apply to receipts or accruals (other than rents) from subcontracts for new durable productive equipment, except to that part of such receipts or accruals which bears the same ratio to the total of such receipts or accruals as five years bears to the average useful life of such equipment as set forth in Bulletin F of the Bureau of Internal Revenue (1942 edition) or, if an average useful life is not so set forth, then as estimated by the Board.

(2) DEFINITIONS.—For the purpose of this subsection—

(A) the term "durable productive equipment" means machinery, tools, or other equipment which does not become a part of an end product acquired by any agency of the Government under a contract with a department, or of an

[17] Section 106 (9) was added by Pub. Law 216, 84th Cong., approved August 3, 1955, and applies only to contracts with the Departments made after December 31, 1954.

article incorporated therein, and which has an average useful life of more than five years; and

(B) the term "subcontracts for new durable productive equipment" does not include subcontracts where the purchaser of such durable productive equipment has acquired such equipment for the account of the Government, but includes pool orders and similar commitments placed in the first instance by a Department or other agency of the Government when title to the equipment is transferred on delivery thereof or within one year thereafter to a contractor or subcontractor.

[Applicable to fiscal years ending on or after June 30, 1953. See footnote 18]

(1) IN GENERAL.—The provisions of this title shall not apply to receipts or accruals (other than rents) from *contracts or* subcontracts for new durable productive equipment, except (*A*) to that part of such receipts or accruals which bears the same ratio to the total of such receipts or accruals as five years bears to the average useful life of such equipment as set forth in Bulletin F of the Bureau of Internal Revenue (1942 edition) or, if an average useful life is not so set forth, then as estimated by the Board *and (B) to receipts and accruals from contracts for new durable productive equipment in cases in which the Board finds that the new durable productive equipment covered by such contracts cannot be adapted, converted, or retooled for commercial use.*

(2) DEFINITION.—For the purpose of this subsection, the term "durable productive equipment" means machinery, tools, or other productive equipment, which has an average useful life of more than five years.[18]

(d) PERMISSIVE EXEMPTIONS.—The Board is authorized, in its discretion, to exempt from some or all of the provisions of this title—

(1) any contract or subcontract to be performed outside of the territorial limits of the continental United States or in Alaska;

(2) any contracts or subcontracts under which, in the opinion of the Board, the profits can be determined with reasonable certainty when the contract price is established, such as certain classes of (A) agreements for personal services or for the purchase of real property, perishable goods, or commodities the minimum price for the sale of which has been fixed by a public regulatory body, (B) leases and license agreements, and (C) agreements where the period of performance under such contract or subcontract will not be in excess of thirty days;

(3) any contract or subcontract or performance thereunder during a specified period or periods if, in the opinion of the Board, the provisions of the contract are otherwise adequate to prevent excessive profits;

(4) any contract or subcontract the renegotiation of which would jeopardize secrecy required in the public interest;

[18] Matter in italics in paragraph 1 was added by Pub. Law 764, 83d Cong., approved September 1, 1954. Paragraph 2 was amended to read as shown in italics by Pub. Law 764, as amended by Pub. Law 216, 84th Cong., approved August 3, 1955. The latter amendment added "productive" between "other" and "equipment" and struck out "which does not become a part of an end product, or of an article incorporated therein, and" after "other equipment". These amendments apply only with respect to fiscal years ending on or after June 30, 1953.

(5) any subcontract or group of subcontracts not otherwise exempt from the provisions of this section, if, in the opinion of the Board, it is not administratively feasible in the case of such subcontract or in the case of such group of subcontracts to determine and segregate the profits attributable to such subcontract or group of subcontracts from the profits attributable to activities not subject to renegotiation.

The Board may so exempt contracts and subcontracts both individually and by general classes or types.

[Applicable to fiscal years ending after June 30, 1956]

(e) Mandatory Exemption for Standard Commercial Articles and Services.—

(1) Articles and services.—The provisions of this title shall not apply to amounts received or accrued in a fiscal year under any contract or subcontract for an article or service which (with respect to such fiscal year) is—

(A) a standard commercial article;

(B) an article which is identical in every material respect with a standard commercial article; or

(C) a service which is a standard commercial service or is reasonably comparable with a standard commercial service.

(2) Classes of articles.—The provisions of this title shall not apply to amounts received or accrued in a fiscal year under any contract or subcontract for an article which (with respect to such fiscal year) is an article in a standard commercial class of articles.

(3) Applications.—Paragraph (1) (B) or (C) and paragraph (2) shall apply to amounts received or accrued in a fiscal year under any contract or subcontract for an article or service only if—

(A) the contractor or subcontractor at his election files, at such time and in such form and detail as the Board shall by regulations prescribe, an application containing such information and data as may be required by the Board under its regulations for the purpose of enabling it to make a determination under the applicable paragraph, and

(B) the Board determines that such article or service is, or fails to determine that such article or service is not, an article or service to which such paragraph applies, within the following periods after the date of filing such application:

(i) in the case of paragraph (1) (B) or (C), three months;

(ii) in the case of paragraph (2), six months; or

(iii) in either case, any longer period stipulated by mutual agreement.

(4b Definitions.—For the purposes of this subsection—

(A) the term "article" includes any material, part, component, assembly, machinery, equipment, or other personal property;

(B) the term "standard commercial article" means, with respect to any fiscal year, an article—

(i) which either is customarily maintained in stock by the contractor or subcontractor or is offered for sale in accordance with a price schedule regularly maintained by the contractor or subcontractor, and

(ii) from the sales of which by the contractor or subcontractor at least 35 percent of the receipts or accruals in such fiscal year, or of the aggregate receipts or accruals in such fiscal year and the preceding fiscal year, are not (without regard to this subsection and subsection (c) of this section) subject to this title;

(C) an article is, with respect to any fiscal year, "identical in every material respect with a standard commercial article" only if—

(i) such article is of the same kind and manufactured of the same or substitute materials (without necessarily being of identical specifications) as a standard commercial article from sales of which the contractor or subcontractor has receipts or accruals in such fiscal year.

(ii) such article is sold at a price which is reasonably comparable with the price of such standard commercial article, and

(iii) at least 35 percent of the aggregate receipts or accruals in such fiscal year by the contractor or subcontractor from sales of such article and sales of such standard commercial article are not (without regard to this subsection and subsection (c) of this section) subject to this title;

(D) the term "service" means any processing or other operation performed by chemical, electrical, physical, or mechanical methods directly on materials owned by another person;

(E) the term "standard commercial service" means, with respect to any fiscal year, a service from the performance of which by the contractor or subcontractor at least 35 percent of the receipts or accruals in such fiscal year are not (without regard to this subsection) subject to this title;

(F) a service is, with respect to any fiscal year, "reasonably comparable with a standard commercial service" only if—

(i) such service is of the same or a similar kind, performed with the same or similar materials, and has the same or a similar result, without necessarily involving identical operations, as a standard commercial service from the performance of which the contractor or subcontractor has receipts or accruals in such fiscal year, and

(ii) at least 35 percent of the aggregate receipts or accruals in such fiscal year by the contractor or subcontractor from the performance of such service and such standard commercial service are not (without regard to this subsection) subject to this title; and

(G) the term "standard commercial class of articles" means, with respect to any fiscal year, two or more articles with respect to which the following conditions are met:

(i) at least one of such articles either is customarily maintained in stock by the contractor or subcontractor or is offered for sale in accordance with a price schedule regularly maintained by the contractor or subcontractor,

(ii) all of such articles are of the same kind and manufactured of the same or substitute materials (without necessarily being of identical specifications),

(iii) all of such articles are sold at reasonably comparable prices, and

(iv) at least 35 percent of the aggregate receipts or accruals in the fiscal year by the contractor or subcontractor from sales of all of such articles are not (without regard to this subsection and subsection (c) of this section) subject to this title.

(5) WAIVER OF EXEMPTION.—Any contractor or subcontractor may waive the exemption provided in paragraphs (1) and (2) with respect to his receipts or accruals in any fiscal year from sales of any article or service by including a statement to such effect in the financial statement filed by him for such fiscal year pursuant to section 105 (e) (1), without necessarily waiving such exemption with respect to receipts or accruals in such fiscal year from sales of any other article or service. A waiver, if made, shall be unconditional, and no waiver may be made without the permission of the Board for any receipts or accruals with respect to which the contractor or subcontractor has previously filed an application under paragraph (3).

(6) NONAPPLICABILITY DURING NATIONAL EMERGENCIES.—Paragraphs (1) and (2) shall not apply to amounts received or accrued during a national emergency proclaimed by the President, or declared by the Congress, after the date of the enactment of the Renegotiation Amendments Act of 1956.[19]

SEC. 107. RENEGOTIATION BOARD.

(a) CREATION OF BOARD.—There is hereby created, as an independent establishment in the executive branch of the Government, a Renegotiation Board to be composed of five members to be appointed by the President, by and with the advice and consent of the Senate. The Secretaries of the Army, the Navy, and the Air Force, respectively, subject to the approval of the Secretary of Defense, and the Administrator of General Services shall each recommend to the President, for his consideration, one person from civilian life to serve as a member of the Board. The President shall, at the time of appointment, designate one member to serve as Chairman. The Chairman shall receive compensation at the rate of $17,500 per annum, and the other members shall receive compensation at the rate of $15,000 per annum. No member shall actively engage in any business, vocation, or employment other than as a member of the Board. The Board shall have a seal which shall be judicially noticed.

(b) PLACES OF MEETINGS AND QUORUM.—The principal office of the Board shall be in the District of Columbia, but it or any division thereof may meet and exercise its powers at any other place. The Board may establish such number of offices as it deems necessary to expedite the work of the Board. Three members of the Board shall constitute a quorum, and any power, function, or duty of the Board may be exercised or performed by a majority of the members present if the members present constitute at least a quorum.

(c) PERSONNEL.—The Board is authorized, subject to the Classification Act of 1949 *and the civil-service laws and regulations,*[20] to employ

[19] Section 106(e) was added by Pub. Law 870, 84th Cong., approved August 1, 1956, and applies only with respect to fiscal years ending after June 30, 1956.

[20] Matter in italics in section 107(c) was substituted by Pub. Law 870, 84th Cong., approved August 1, 1956, for "(but without regard to the civil-service laws and regulations)".

and fix the compensation of such officers and employees as it deems necessary to assist it in carrying out its duties under this title. The Board may, with the consent of the head of the agency of the Government concerned, utilize the services of any officers or employees of the United States, and reimburse such agency for the services so utilized. Officers or employees whose services are so utilized shall not receive additional compensation for such services, but shall be allowed and paid necessary travel expenses and a per diem in lieu of subsistence in accordance with the Standardized Government Travel Regulations while away from their homes or official station on duties of the Board.

(d) DELEGATION OF POWERS.—The Board may delegate in whole or in part any function, power, or duty (other than its power to promulgate regulations and rules and other than its power to grant permissive exemptions under section 106 (d)) to any agency of the Government, including any such agency established by the Board, and may authorize the successive redelegation, within limits specified by it, of any such function, power, or duty to any agency of the Government, including any such agency established by the Board. But no function, power, or duty shall be delegated or redelegated to any person pursuant to this subsection or subsection (f) unless the Board has determined that such person (other than the Secretary of a Department) is responsible directly to the Board or to the person making such delegation or redelegation and is not engaged on behalf of any Department in the making of contracts for the procurement of supplies or services, or in the supervision of such activity; and any delegation or redelegation of any function, power, or duty pursuant to this subsection or subsection (f) shall be revoked by the person making such delegation or redelegation (or by the Board if made by it) if the Board shall at any time thereafter determine that the person (other than the Secretary of a Department) to whom has been delegated or redelegated such function, power, or duty is not responsible directly to the Board or to the person making such delegation or redelegation or is engaged on behalf of any Department in the making of contracts for the procurement of supplies or services, or in the supervision of such activity.

(e) ORGANIZATION AND OPERATION OF BOARD.—The Chairman of the Board may from time to time divide the Board into division of one or more members, assign the members of the Board thereto, and in case of a division of more than one member, designate the chief thereof. The Board may also, by regulations or otherwise, determine the character of cases to be conducted initially by the Board through an officer or officers of, or utilized by, the Board, the character of cases to be conducted initially by the various agencies of the Government authorized to exercise powers of the Board pursuant to subsection (d) of this section, the character of cases to be conducted initially by the various divisions of the Board, and the character of cases to be conducted initially by the Board itself. The Board may review any determination in any case not initially conducted by it, on its own motion or, in its discretion, at the request of any contractor or subcontractor aggrieved thereby. Unless the Board upon its own motion initiates a review of such determination within ninety days from the date of such determination, or at the request of the contractor or subcontractor made within ninety days from the date of such determination initiates a review of such determination within

ninety days from the date of such request, such determination shall be deemed the determination of the Board. If such determination was made by an order with respect to which notice thereof was given by registered mail pursuant to section 105(a), the Board shall give notice by registered mail to the contractor or subcontractor of its decision not to review the case. If the Board reviews any determination in any case not initially conducted by it and does not make an agreement with the contractor or subcontractor with respect to the elimination of excessive profits, it shall issue and enter an order under section 105(a) determining the amount, if any, of excessive profits, and forthwith give notice thereof by registered mail to the contractor or subcontractor. The amount of excessive profits so determined upon review may be less than, equal to, or greater than, that determined by the agency of the Government whose action is so reviewed.

(f) DELEGATION OF RENEGOTIATION FUNCTIONS TO BOARD.—The Board is hereby authorized and directed to accept and perform such renegotiation powers, duties, and functions as may be delegated to it under any other law requiring or permitting renegotiation, and the Board is further authorized to redelegate any such power, duty, or function to any agency of the Government and to authorize successive redelegations thereof, within limits specified by the Board. Notwithstanding any other provision of law, the Secretary of Defense is hereby authorized to delegate to the Board, in whole or in part, the powers, functions, and duties conferred upon him by any other renegotiation law.

SEC. 108. REVIEW BY THE TAX COURT

Any contractor or subcontractor aggrieved by an order of the Board determining the amount of excessive profits received or accrued by such contractor or subcontractor may—

(a) if the case was conducted initially by the Board itself—within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the last day) after the mailing under section 105(a) of the notice of such order, or

(b) if the case was not conducted initially by the Board itself—within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the last day) after the mailing under section 107(c) of the notice of the decision of the Board not to review the case or the notice of the order of the Board determining the amount of excessive profits,

file a petition with The Tax Court of the United States for a redetermination thereof. Upon such filing such court shall have exclusive jurisdiction, by order, to finally determine the amount, if any, of such excessive profits received or accrued by the contractor or subcontractor, and such determination shall not be reviewed or redetermined by any court or agency. The court may determine as the amount of excessive profits an amount either less than, equal to, or greater than that determined by the Board. A proceeding before the Tax Court to finally determine the amount, if any, of excessive profits shall not be treated as a proceeding to review the determination of the Board, but shall be treated as a proceeding de novo. For the purposes of this section the court shall have the same powers and duties, insofar as applicable in respect of the contractor, the subcontractor, the Board,

and the Secretary, and in respect of the attendance of witnesses and the production of papers, notice of hearings, hearings before divisions, review by the Tax Court of decisions of divisions, stenographic reporting, and reports of proceedings, as such court has under sections 1110, 1111, 1113, 1114, 1115(a), 1116, 1117(a), 1118, 1120, and 1121 of the Internal Revenue Code in the case of a proceeding to redetermine a deficiency. In the case of any witness for the Board, the fees and mileage, and the expenses of taking any deposition shall be paid out of appropriations of the Board available for that purpose, and in the case of any other witnesses shall be paid, subject to rules prescribed by the court, by the party at whose instance the witness appears or the deposition is taken. The filing of a petition under this section shall operate to stay the execution of the order of the Board under subsection (b) of section 105 *only* [21] if within ten days after the filing of the petition the petitioner files with the Tax Court a good and sufficient bond, approved by such court, in such amount as may be fixed by the court. Any amount collected by the United States under an order of the Board in excess of the amount found to be due under a determination of excessive profits by the Tax Court shall be refunded to the contractor or subcontractor with interest thereon at the rate of 4 per centum per annum from the date of collection by the United States to the date of refund.

SEC. 108A. VENUE OF APPEALS FROM TAX COURT DECISIONS IN RENEGOTIATION CASES.

A decision of the Tax Court of the United States under section 108 of this Act may, to the extent subject to review, be reviewed by—

(1) the United States Court of Appeals for the circuit in which is located the office to which the contractor or subcontractor made his Federal income-tax return for the taxable year which corresponds to the fiscal year with respect to which such decision of the Tax Court was made, or if no such return was made for such taxable year, then by the United States Court of Appeals for the District of Columbia, or

(2) any United States Court of Appeals designated by the Attorney General and the contractor or subcontractor by stipulation in writing.[22]

SEC. 109. RULES AND REGULATIONS.

The Board may make such rules, regulations, and orders as it deems necessary or appropriate to carry out the provisions of this title.

SEC. 110. COMPLIANCE WITH REGULATIONS, ETC.

No person shall be held liable for damages or penalties for any act or failure to act resulting directly or indirectly from his compliance with a rule, regulation, or order issued pursuant to this title, notwithstanding that any such rule, regulation, or order shall thereafter be declared by judicial or other competent authority to be invalid.

SEC. 111. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT.

The functions exercised under this title shall be excluded from the operation of the Administrative Procedure Act (60 Stat. 237) except as to the requirements of section 3 thereof.

[21] Matter in italics in section 108 was added by Pub. Law 870, 84th Cong., approved August 1, 1956. This amendment is effective as of the date of the enactment of the Renegotiation Act of 1951.
[22] Section 108A was added by Pub. Law 870, 84th Cong., approved August 1, 1956.

SEC. 112. APPROPRIATIONS.

There are hereby authorized to be appropriated such sums as may be necessary and appropriate for the carrying out of the provisions and purposes of this title. Funds made available for the purposes of this title may be allocated or transferred for any of the purposes of this title with the approval of the Bureau of the Budget to any agency of the Government designated to assist in carrying out this title. Funds so allocated or transferred shall remain available for such period as may be specified in the Acts making such funds available.

SEC. 113. PROSECUTION OF CLAIMS AGAINST UNITED STATES BY FORMER PERSONNEL.

Nothing in title 18, United States Code, sections 281 and 283, or in section 190 of the Revised Statutes (U.S.C., title 5, sec. 99) shall be deemed to prevent any person by reason of service in a Department or the Board from acting as counsel, agent, or attorney for prosecuting any claim against the United States: *Provided*, That such person shall not prosecute any claim against the United States (1) involving any subject matter directly connected with which such person was so employed, or (2) during the period such person is engaged in employment in a Department or the Board.[23]

SEC. 114. REPORTS TO CONGRESS.

The Board shall on or before January 1, 1957, and on or before January 1 of each year thereafter, submit to the Congress a complete report of its activities for the preceding year ending on June 30. Such report shall include—

(1) the number of persons in the employment of the Board during such year, and the places of their employment;

(2) the administrative expenses incurred by the Board during such year;

(3) statistical data relating to filings during such year by contractors and subcontractors, and to the conduct and disposition during such year of proceedings with respect to such filings and filings made during previous years;

(4) an explanation of the principal changes made by the Board during such year in its regulations and operating procedures;

(5) the number of renegotiation cases disposed of by the Tax Court, each United States Court of Appeals, and the Supreme Court during such year, and the number of cases pending in each such court at the close of such year; and

(6) such other information as the Board deems appropriate.[24]

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[23] Section 113 was amended by Pub. Law 870, 84th Cong., approved August 1, 1956, by striking out "during the period (or a part thereof) beginning July 1,1950, and ending December 31, 1953," before "from acting"

[24] Section 114 was added by Pub. Law 870, 84th Cong., approved August 1, 1956.

TITLE II—MISCELLANEOUS PROVISIONS

SEC. 201. FUNCTIONS UNDER WORLD WAR II RENEGOTIATION ACT.

(a) ABOLITION OF WAR CONTRACTS PRICE ADJUSTMENT BOARD.—The War Contracts Price Adjustment Board, created by the Renegotiation Act, is hereby abolished.

(b) TRANSFER OF FUNCTIONS IN GENERAL.—All powers, functions, and duties conferred upon the War Contracts Price Adjustment Board by the Renegotiation Act and not otherwise specifically dealt with in this section are transferred to the Renegotiation Board.

(c) AMENDMENT OF THE RENEGOTIATION ACT.—Subsection (a) (4) (D) of the Renegotiation Act is amended by inserting at the end thereof the following: "A net renegotiation rebate shall not be repaid unless a claim therefor has been filed with the Board on or before the date of its abolition, or unless a claim shall have been filed with the Administrator of General Services (i) on or before June 30, 1951,[25] or (ii) within ninety days after the making of an agreement or the entry of an order under subsection (c) (1) determining the amount of excessive profits, whichever is later. A claim shall be deemed to have been filed when received by the Board or the Administrator, whether or not accompanied by a statement of the Commissioner of Internal Revenue showing the amortization deduction allowed for the renegotiated year upon the recomputation made pursuant to section 124 (d) of the Internal Revenue Code."

(d) TRANSFER OF CERTAIN FUNCTIONS.—All powers, functions, and duties conferred upon the War Contracts Price Adjustment Board by subsection (a) (4) (D) of the Renegotiation Act, subject to the amendment thereof by subsection (c) of this section, are hereby transferred to the Administrator of General Services.

(e) FUNCTIONS AND RECORDS.—Each Secretary of a Department is authorized and directed to eliminate the excessive profits determined under all existing renegotiation agreements or orders by the methods enumerated in subsection (c) (2) of the Renegotiation Act in respect of all renegotiations conducted by his Department pursuant to delegations from the War Contracts Price Adjustment Board. The several Departments shall retain custody of the renegotiation case files covering renegotiations thus conducted for such time as the Secretary deems necessary for the purposes of this section, and thereafter they shall be made available to the Renegotiation Board for appropriate disposition. The renegotiation records of the War Contracts Price Adjustment Board shall become records of the Renegotiation Board on the effective date of this section.

(f) REFUNDS.—All refunds under subsection (a) (4) (D) of the Renegotiation Act (relating to the recomputation of the amortization deduction), all refunds under the last sentence of subsection (i) (3) of such Act (relating to excess inventories), and all amounts finally adjudged or determined to have been erroneously collected by the United States pursuant to a determination of excessive profits, with interest thereon in the last mentioned case at a rate not to exceed 4 per centum per annum as may be determined by the Administrator of General Services or his duly authorized representative computed to the date of certification to the Treasury Department for payment, shall be certified by the Administrator of General Services or his duly

[25] Subsection (a) (4) (D) of the Renegotiation Act was further amended by Public Law 183, 82d Cong., approved October 20, 1951, which changed "June 30, 1951" to "October 31, 1951," and by Public Law 576, 82d Cong., approved July 17, 1952, which changed "October 31, 1951" to "December 31, 1952."

authorized representative to the Treasury Department for payment from such appropriations as may be available therefor: *Provided*, That such refunds shall be based solely on the certificate of the Administrator of General Services or his duly authorized representative.

(g) EXISTING POLICIES, PROCEDURES, ETC., TO REMAIN IN EFFECT.—All policies, procedures, directives, and delegations of authority prescribed or issued (1) by the War Contracts Price Adjustment Board, or (2) by any Secretary or other duly authorized officer of the Government, under the authority of the Renegotiation Act, in effect upon the effective date of this section and not inconsistent herewith, shall remain in full force and effect unless and until superseded, or except as they may be amended, under the authority of this section or any other appropriate authority. All functions, powers, and responsibilities transferred by this section shall be accompanied by the authority to issue appropriate regulations and procedures, or to modify existing procedures, in respect of such powers, functions, and responsibilities.

(h) SAVINGS PROVISION.—This section shall not be construed (1) to prohibit disbursements authorized by the War Contracts Price Adjustment Board and certified pursuant to its authority prior to the effective date of this section, (2) to affect the validity or finality of any agreement or order made or issued pursuant to law by the War Contracts Price Adjustment Board or pursuant to delegations of authority from it, or (3) to prejudice or to abate any action taken or any right accruing or accrued, or any suit or proceeding had or commenced in any civil cause; but any court having on its docket a case to which the War Contracts Price Adjustment Board is a party, on motion or supplemental petition filed at any time within *four years* after the effective date of this section, showing a necessity for the survival of such suit, action, or other proceeding to obtain a determination of the questions involved, may allow the same to be maintained by or against the United States. *If any such case has been dismissed by any court for failure to substitute for the War Contracts Price Adjustment Board prior to the effective date of this sentence, such case is hereby revived and reinstated in such court as if it had not been dismissed.*[26]

(i) RENEGOTIATION ACT NOT REPEALED.—Except as by this Act specifically amended or modified, all provisions of the Renegotiation Act shall remain in full force and effect.

(j) DEFINITIONS.—The terms which are defined in the Renegotiation Act shall, when used in this section, have the same meaning as when used in the Renegotiation Act, except that where a renegotiation function has been transferred by or pursuant to law the terms "Secretary" or "Secretaries" and "Department" or "Departments" shall be understood to refer to the successors in function to those officers or offices specifically named in the Renegotiation Act.

(k) EFFECTIVE DATE OF SECTION.—This section shall take effect sixty days after the date of the enactment of this Act.

SEC. 262. PERIOD OF LIMITATIONS FOR RENEGOTIATION ACT OF 1948.

No proceeding under the Renegotiation Act of 1948 to determine the amount of excessive profits for any fiscal year shall be commenced more than one year after the mandatory statement required by the regulations issued pursuant to such Act is filed with respect to such

[26] Matter in italics in section 201(h) was added by Pub. Law 764, 83d Cong., approved September 1, 1954.

year, or more than six months after the date of the enactment of this title, whichever is the later, and if such proceeding is not so commenced (in the manner provided by the regulations prescribed pursuant to such Act), all liabilities of the contractor or subcontractor under such Act for excessive profits received or accrued during such fiscal year shall thereupon be discharged. If an agreement or order determining the amount of excessive profits under such Act is not made within two years following the commencement of the renegotiation proceeding, then upon the expiration of such two years all liabilities of the contractor or subcontractor for excessive profits with respect to which such proceeding was commenced shall thereupon be discharged, except that (1) such two-year period may be extended by mutual agreement, and (2) if within such two years such an order is duly issued pursuant to such Act, such two-year limitation shall not apply to the review of such order by any renegotiation board duly authorized to undertake such review.

SEC. 203. AMENDMENT OF SECTION 3806 OF THE INTERNAL REVENUE CODE.

Section 3806(a)(1) of the Internal Revenue Code is hereby amended by striking out subparagraphs (A), (B), and (C) and inserting in lieu thereof the following:

"(A) The term 'renegotiation' includes any transaction which is a renegotiation within the meaning of the Federal renegotiation act applicable to such transaction, any modification of one or more contracts with the United States or any agency thereof, and any agreement with the United States or any agency thereof in respect of one or more such contracts or subcontracts thereunder.

"(B) The term 'excessive profits' includes any amount which constitutes excessive profits within the meaning assigned to such term by the applicable Federal renegotiation act, any part of the contract price of a contract with the United States or any agency thereof, any part of the subcontract price of a subcontract under such a contract, and any profits derived from one or more such contracts or subcontracts.

"(C) The term 'subcontract' includes any purchase order or agreement which is a subcontract within the meaning assigned to such term by the applicable Federal renegotiation act.

"(D) The term 'Federal renegotiation act' includes section 403 of the Sixth Supplemental National Defense Appropriation Act (Public 528, 77th Cong., 2d Sess.), as amended or supplemented, the Renegotiation Act of 1948, as amended or supplemented, and the Renegotiation Act of 1951, as amended or supplemented."

SEC. 204. SEPARABILITY PROVISION.

If any provision of this Act or the application of any provision to any person or circumstance is held invalid, the validity of the remainder of the Act and of the application of its provisions to other persons and circumstances shall not be affected thereby.

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